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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,727	03/07/2007	Michael C. Steckner	PHUS030393US	2265
38107 7590 01/22/2010 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P. O. Box 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER NGUYEN, HIEN NGOC				
ART UNIT 3768		PAPER NUMBER		
MAIL DATE 01/22/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/573,727

Applicant(s)

STECKNER ET AL.

Examiner

HIEN NGUYEN

Art Unit

3768

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03/28/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6-9 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Schweikard et al. (US 6,501,981).

Schweikard discloses an apparatus and a method for tracking and treatment of target region comprises:

- an MRI apparatus for generating MR images during an MR scan of the subject disposed within an examination region; (see col. 2, lines 10-48).
- an MRI localizer for receiving the image data from the MRI apparatus wherein the target is localized; (see col. 2, lines 10-48 and Fig.2, 4 and 12).
- a reference marker localizer for non-invasively receiving reference data from a plurality of reference points disposed in proximity to the target wherein the reference points are localized; (see col. 2, lines 10-67, col. 3, line 66-col.4, line 11 and col. 6, lines 28-50). Internal markers and external markers/sensors are reference points disposed in proximity to the target

and these reference points non-invasively provide reference data to the apparatus that enable the apparatus to accurately determine the position of the target region. When position of the target is being track base on markers it is inherent the markers are localized.

- a tracking processor for receiving localized data from the MRI localizer wherein a relationship between the reference markers and the target region is generated; (see col. 2, lines 48-67 and col.4, line 50-col.5, line 27).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schweikard et al. (US 6,501,981) in view of Acker et al. (US 6,374,132).

Schweikard discloses substantially all claim limitation set forth in claims 4, 7 and 12. However, Schweikard does not disclose an ultrasound ablator. Acker discloses an ultrasound ablator use for medical procedure such as hyperthermia treatment of tissue (see abstract, col. 17, lines 8-43 and col. 13, lines 1-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Schweikard's apparatus to include an ultrasound ablator as taught by Acker because the ultrasound ablator allows the apparatus to perform hyperthermia treatment of tissue.

Response to Arguments

Applicant's argument filed 09/30/2009 has been fully considered but they are not persuasive. Regarding claims 1, 6 and 11 applicant argues Schweikard does not teach or suggest a reference marker localizer for non-invasively receiving reference data from a plurality of reference points disposed in proximity to the target wherein the reference points are localized. Applicant's argument is not persuasive because it is inherent that Schweikard's apparatus and method use a reference marker localizer and the processor to receive positional data from internal markers and external markers/sensors that are disposed in proximity to the target in order to accurately determine the position of the target region (col. 2, lines 10-67). This is the same as the claim limitation because data receive from internal and external markers/sensor (reference points) in proximity to the target is received non-invasively and when the target region is being tracked based on internal and external markers/sensors the markers are localized.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HIEN NGUYEN whose telephone number is (571)270-7031. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571)272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. N./
Examiner, Art Unit 3768

/Long V Le/
Supervisory Patent Examiner, Art Unit 3768